

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

REYNOLDS METALS COMPANY and  
ALCOA INC.,

Plaintiffs,

and

NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA,

Plaintiff-in-Intervention,

v.

ALCAN INC. and ALCAN ALUMINUM  
CORPORATION

Defendants.

Case No. C04-175RJB

ORDER ON  
MOTIONS *IN LIMINE*

This matter comes before the court on Motions *in Limine* (Dkts. 176, 177, 179, 180, 181, 182, 183, 184 & 185). The court is familiar with the records and files herein and all documents filed in support of and in opposition to the motions.

The court cannot pre-try all evidentiary issues in a case before trial, and in this case the court is faced with a flood of motions *in limine*, not all of which can be accurately addressed before trial. In regard to some of the motions *in limine* in this case, there is no showing of specifically what evidence will, or may, be offered. The court also notes that the events of trial may change preliminary rulings. For example, something that is not admissible under ordinary circumstances might be admissible for a limited purpose, such as impeachment. The rulings herein may be further honed at the pretrial conference and at trial.

1 The parties should note that the denial of a motion *in limine* does not indicate that the  
2 challenged evidence is admissible, nor does the granting of a motion *in limine* indicate that  
3 evidence will not be admitted if the events of the trial demonstrate that the ruling *in limine* needs  
4 to be modified.

5 With those caveats, which apply to the motions *in limine* referenced herein and all other  
6 motions *in limine* which may be presented to the court in this case, and for the following reasons,  
7 the court now ORDERS as follows:

8 The parties, their attorneys and witnesses shall not directly or indirectly mention, refer to,  
9 or attempt to convey to the jury in any manner any of the facts and arguments ruled out by this  
10 order without first obtaining the permission of the court, outside the presence and hearing of the  
11 jury, and further, that counsel is instructed to warn and caution their clients and witnesses to  
12 follow any order entered by the court in connection with motions *in limine*.

13 Docket 176, Plaintiff's Motion in Limine to Exclude Certain Evidence Regarding Lynn  
14 Voss. This motion is DENIED without prejudice. Admissibility of that portion of Lynn Voss'  
15 proposed testimony, which is the subject of this motion, depends upon Mr. Voss' testimony on  
16 direct examination. The motion *in limine* may be raised again before cross-examination.

17 Docket 177, National Union's Motion in Limine to Exclude Testimony of Thomas J.  
18 Summerson. This motion is GRANTED IN PART and DENIED IN PART. It appears to the  
19 court that the best way to approach this motion is with reference to Mr. Summerson's expert  
20 report, which is filed as Exhibit A to Defendants' Opposition to Plaintiff National Union's Motion  
21 *in Limine* to Exclude Testimony of Thomas J. Summerson (Dkt. 188).

22 It appears from the report that there is a substantial risk of jury boredom during Mr.  
23 Summerson's testimony. That, however, is not the subject of this motion. It is apparent from the  
24 report that on occasion, Mr. Summerson appears to become an advocate rather than an opinion  
25 witness, and that some of his opinions go beyond his expertise. Some of the contents of his report  
26 indicate that some of his proposed testimony will not assist the jury or will simply be Mr.  
27 Summerson's opinion of what the jury should conclude from the other evidence in the case.

1 For those reasons, the motion should be GRANTED as to the following portions of Mr.  
2 Summerson's proposed testimony as disclosed by the expert report (the following references are  
3 to his report):

4 "There is no good explanation of why 5083-H321 was used instead of 5083-H116  
5 since RASCO had been advised by both Alcoa and Alcan not to use the -H321  
6 temper"; "Moreover, both military agencies and commercial boat builders have  
7 been well aware "; "are well aware of the danger"; "Their field engineers and  
8 technical staff have repeatedly visited boat builders since 1970 " (page 1); "Thus it  
9 was obvious that military and commercial marine industry were well aware of the  
10 poor performance of 5456-H321 and that the -H116 temper should be used for all  
11 marine structural applications" (page 6); "Since the -H116 has been the only  
12 temper in North America recognized as marine grade for decades, the -H321  
13 temper would be recognized as unacceptable for marine applications where  
14 corrosion is required by people knowledgeable in the industry" (The court notes  
15 Mr. Summerson's opinion does not say by whom the temper was recognized or  
16 whether this was some official recognition or only his opinion, nor does he note  
17 who he refers to as "people knowledgeable in the industry"); "someone  
18 disregarding the well documented evidence that problems can be encountered  
19 when" (Page 7); "Therefore, it would be expected boat builders and naval  
20 architects would be aware that -H116 was the only temper suitable for marine  
21 applications where corrosion resistance is required."; "However, that confusion  
22 could not be reasonably attributed to RASCO (Reynolds) since Reynolds and  
23 Alcoa, the Plaintiffs in this case, were instrumental in developing the standard.";  
24 "Whereas field engineers from suppliers had been available to customers for  
25 consultation on end-use, it appears that the market no longer supports this effort.  
26 Customers have assumed greater responsibility for application decisions and  
27 supplier's responsibility has become limited to supplying product to specification";  
28 "knowing that the -H321 temper was not certified" (page 8).

1 The court also notes that in the report at page 6, the three paragraphs beginning  
2 “Information has become available recently”, “In February 2002, Reynolds-Richmond” and “I  
3 recently became aware of statements” and on page 8, the paragraph beginning “Both Plaintiffs,  
4 Reynolds and Alcoa”, all refer to documents. Mr. Summerson’s synopsis of those documents  
5 would not be the best evidence of their contents. To the foregoing extent, National Union’s  
6 Motion *in Limine* to Exclude Testimony of Thomas J. Summerson is GRANTED IN PART and  
7 DENIED IN PART.

8 Docket 179, Defendants’ Motion *in Limine* to Preclude Evidence or Testimony  
9 Concerning Either Lloyd’s Register of Alcan Aluminum Corp’s Oswego Plant or Any Marine  
10 Classification Registration of Any Other Alcan Facility. This motion is DENIED.

11 Docket 180, Defendants’ Motion *in Limine* to Preclude Evidence or Argument  
12 Concerning Products Other than the 5083-H321 at Issue. This motion is not clear to the court  
13 and therefore is DENIED without prejudice. Counsel is reminded that the Rules of Evidence will  
14 control admissibility of this subject matter.

15 Docket 181, Defendants’ Motion *in Limine* to Preclude Evidence or Testimony  
16 Concerning Russell Metals Company. This motion is DENIED. It will be better to judge the  
17 relevance of the testimony that is the subject of this motion in light of the evidence produced at  
18 trial.

19 Docket 182, Defendants’ Motion *in Limine* to Preclude Evidence or Testimony Regarding  
20 Purchases of 5083-H321 From Early 1980's to Early 1990's. This motion is DENIED.

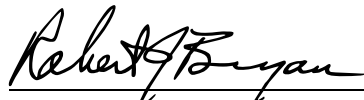
21 Docket 183, Defendants’ Motion *in Limine* to Preclude Evidence or Testimony  
22 Concerning Admitted Facts. This motion is DENIED. The court encourages stipulations and  
23 efficiency in presenting evidence that is not contested, but the parties can best decide how to offer  
24 evidence, whether contested or not, to fully and properly present their case to the jury, subject, of  
25 course, to the court’s supervisory powers. (See ER 101 & 601)

26 Docket 184, Defendants’ Motion *in Limine* to Preclude Testimony of Boat Builders  
27 Concerning Personal Views of Alcan or Alcan’s Role in Refusing to Fund Settlements. This  
28 motion should be GRANTED. The parties are apparently in agreement that the testimony

1 defendant seeks to preclude will not be offered and the only issue raised by plaintiff is whether the  
2 court's order granting this motion *in limine* will be "susceptible to misapplication." The court can  
3 appropriately apply the Rules of Evidence at trial to avoid misapplication of this ruling. Docket  
4 185, Defendants' Motion in Limine to Preclude Testimony of Personal Views of Non-Experts  
5 Concerning Market Expectations. This motion should be DENIED. The court is not sure of  
6 exactly what testimony is targeted by this motion, but in any event, the issues raised by it are  
7 adequately covered by the Rules of Evidence.

8 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
9 to any party appearing *pro se* at said party's last known address.

10 DATED this 3<sup>rd</sup> day of March, 2006.

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13 Robert J. Bryan  
14 United States District Judge  
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